



# IMPROVING GLOBAL ACCOUNTABILITY: THE ICC AND NONVIOLENT CRIMES AGAINST HUMANITY



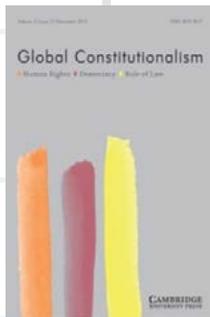
a One Earth Future  
Policy Brief

**How and why nonviolent crimes can and should  
be prosecuted at the global level.**

# IMPROVING GLOBAL ACCOUNTABILITY: THE ICC AND NONVIOLENT CRIMES AGAINST HUMANITY

## BACKGROUND

The journal *Global Constitutionalism* published an article by Eamon Aloyo in its November 2013 issue entitled, “Improving Global Accountability: The ICC and Nonviolent Crimes Against Humanity.” The following policy recommendations arise from that article and attempt to address how individuals who commit nonviolent crimes can be held accountable at the global level.



[LINK TO ARTICLE](#)

Cover: Clockwise from top: “Scales of justice” by Jason Luper, Flickr; “General view of the courtroom at the ICC” by AFP/Lex van Lieshout, vir.com; “The International Criminal Court in The Hague” by Vincent van Zeijst, wikipedia.org; “Farm collectives”, Mao’s Great Famine - amazon.com

## RESEARCH SUMMARY AND POLICY RECOMMENDATIONS

The International Criminal Court (ICC) is an important step forward in global accountability: it exists to provide a venue by which those who commit international crimes can be tried and convicted for these violations even when national governments are unable or unwilling. The primary crimes tried by the ICC have been those of violence: direct military or lethal force used against others. Those individuals who commit murder using nonviolent techniques such as the intentional infliction of starvation have not yet been considered to fall under the jurisdiction of the ICC. **This weakens the potential deterrence factor that the ICC could otherwise establish, and undermines the idea of international criminal law as a universal construct.** In the *Global Constitutionalism* article, Aloyo proposes a method and makes the case for holding these individuals accountable – an objective which can actually already be carried out within the existing authority of the ICC.

**Institutions and policymakers can help spread the recognition that nonviolent crimes can cause widespread and serious harms comparable to violent crimes.** While it may seem that murderers who kill through violent means are always more easily prosecuted than those who kill through nonviolent means, Aloyo presents the cases of past atrocities that not only can be documented, but which are just as objectionable as violent crimes. Aloyo argues that **in judging the gravity of a crime, it is not just how a crime is carried out that matters, but the severity of the harm and how many people have been affected by it.** Identifying existing cases and evoking them in legal context will be an important step forward.

To illustrate, Aloyo points out that Mao Zedong's policies associated with the Great Leap Forward killed at least 45 million people in the period from 1958 to 1962 – the same magnitude as the people killed in the Second World War. Joseph Stalin's policies against enemies to his regime caused the starvation to death of 7-10 million people – ten times the number killed in the Rwandan genocide. By the considerations in the Rome Statue, the ICC's foundational document, it is the number of dead and severely harmed victims, the severity, the scale, whether the crime is systematic, and the impact of the crime which decides whether a crime is sufficiently grave to be tried at the global level. In both of the cases described above, had these activities been carried out through military force they would have been clearly in violation of international law. However, **the fact that they were accomplished through structural means instead of military force has led to them being treated differently than violent killings.** Given the similarity in harm, severity, systematicness, and scale of the killings, Aloyo argues that this distinction is not meaningful and institutions associated with international law or genocide prevention should argue that nonviolent crimes should be considered by the ICC.



Memorial near Bykivnia, Reuters - rferl.org

► *Prosecutors can draw upon existing treaty language to reinforce the jurisdiction of the ICC over nonviolent crimes against humanity.*

Individuals can cause widespread or systematic nonviolent harms that meet the legal definition of a crime against humanity in Article 7 of the Rome Statute. This is important **because the often costly and difficult process of negotiating amendments to existing treaties in this case is not necessary.** The ICC can begin prosecuting nonviolent crimes against humanity without altering or adding a single word to the Rome Statute.



The language in Article 7 (1) refers to any of a list of **crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”** An attack is “a course of conduct involving the multiple commission of acts...against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” **This does not have to be a military attack**, as evidenced most clearly by section ‘k’ of article 7, which includes the following criteria within crimes against humanity: “Other inhumane acts...intentionally causing great suffering, or serious injury to body or to mental or physical health.” By this specific language, it can be seen that nonviolent crimes can extend to those covered in the Statute. Moreover, this authority may be the only resort for prosecution of these crimes in certain instances.

► *It is important for global accountability mechanisms to exist in regard to nonviolent crimes, especially in the absence of domestic accountability.*

Representative democracy exemplifies the standard version of accountability, by which power wielders are held to standards, information is available to adequately judge the power wielders, and accountability holders have a right and power to sanction. In many cases, then, countries have inadequate accountability mechanisms.

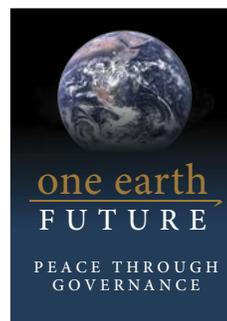
What is more, **representative democracy is not a guarantee against international crimes**, and there currently exist no established global institutions that are the equivalent of domestic accountability structures. However, **a global institution may act as a surrogate accountability holder** to sanction in the absence of the accountability holders who cannot or will not. This is the type of accountability exercised by the ICC.

Aloyo’s article represents the view that some nonviolent harms, whether in a democratic or nondemocratic regime, are never legitimate. Making precedence of recognizing and prosecuting severe nonviolent crimes will be an essential step for further developing global accountability.

One Earth Future Foundation was founded in 2007 with the goal of supporting research and practice in the area of peace and governance. OEF believes that a world beyond war can be achieved by the development of new and effective systems of cooperation, coordination, and decision making. We believe that business and civil society have important roles to play in filling governance gaps in partnership with states. When state, business, and civil society coordinate their efforts, they can achieve effective, equitable solutions to global problems.

As an operating foundation, we engage in research and practice that supports our overall mission. Research materials from OEF envision improved governance structures and policy options, analyze and document the performance of existing governance institutions, and provide intellectual support to the field operations of our implementation projects. Our active field projects apply our research outputs to existing governance challenges, particularly those causing threats to peace and security.

The OEF policy brief series provides distillations of research lessons into practical recommendations for policy and practice.



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